

**Amendment Number 1**  
**To**  
**Contract Number DIR-SDD-253**  
**Between**  
**State of Texas, acting by and through the Department of Information Resources**  
**And**  
**Vion Corporation**

This Amendment Number 1 to Contract Number DIR-SDD-253 ("Contract") is between the Department of Information Resources ("DIR") and Vion Corporation ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

**1. Contract, Section 1C, Order of Precedence**, is hereby restated in its entirety as follows:

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing; Appendix D, Software License Agreement, Appendix E, Master Lease Agreement, including Exhibit 1 to Appendix E, Schedule; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-070, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-070, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, inclusive of Exhibit 1 of Appendix E, and then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Contract, Section 2, Term of Contract**, is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through July 11, 2009. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to one (1) optional one-year renewal period.

**3. Contract, Section 4, Pricing, A. Manufacturer's Suggested Retail Price (MSRP)**, is hereby restated in its entirety as follows:

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

**4. Contract, Section 6, Notification**, Contact information for Vendor is hereby restated as follows:

If sent to the Vendor:  
Dwayne M. Dahl  
ViON Corporation  
1055 Thomas Jefferson St. NW

Washington, DC 20007  
Phone 202-467-5500 x211  
Fax 202-342-1404  
Email: [Dwayne.Dahl@vion.com](mailto:Dwayne.Dahl@vion.com)

**5. Contract, Section 8, Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts,** is hereby updated to include the following:

- A. All references to Catalog Information System Vendors (CISV) are hereby deleted.
- B. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA).

**6. Appendix A, Section 3, Definitions, A. Customer,** is hereby restated in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

**7. Appendix A, Section 4, General Provisions, C. Invalid Term or Condition,** is hereby restated in its entirety as follows:

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR

does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

- 2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**8. Appendix A, Section 9, Vendor Responsibilities, A. Indemnification,** is hereby restated in its entirety as follows:

**1) INDEPENDENT CONTRACTOR**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**3) Infringements**

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

- b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an

injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**4) PROPERTY DAMAGE**

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

**9. Appendix A, Section 9, Vendor Responsibilities, B. Vendor Certifications,** is hereby restated in its entirety as follows:

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

**10. Appendix A, Section 9, Vendor Responsibilities, C. Ability to Conduct Business in Texas,** is hereby restated in its entirety as follows:

Vendor shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

**11. Appendix A, Section 9, Vendor Responsibilities, K. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE,** is hereby updated to include the following:

- 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**12. Appendix A, Section 9, Vendor Responsibilities, L. Overcharges,** is hereby updated to include the following:

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

**13. Appendix A, Section 9, Vendor Responsibilities, M. Prohibited Conduct,** is hereby updated to include the following:

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

**14. Appendix C, Pricing and Services Schedule**, is hereby replaced in its entirety with the restated Appendix C, Pricing and Service Schedule as attached to this Amendment Number 1.

**15. Appendix E, Master Lease Agreement and Exhibit 1 to Appendix E, Schedule**, is hereby added in its entirety.

**16.** All other terms and conditions of the Contract, not specifically modified herein, shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1 and then Contract DIR-SDD-253.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of July 11, 2008.

**Vion Corporation**

**The State of Texas, acting by and through  
the Department of Information Resources**

By: signature on file

By: signature on file

Name: Douglas N. Moore

Name: Cindy Reed

Title: Executive Vice President

Title: Deputy Executive Director  
Operations & Statewide Technology Sourcing

Date: July 17, 2008

Date: July 18, 2008

Legal: July 18, 2008